

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION**

UNITED STATES OF AMERICA, *
Plaintiff, *

v.

MO-07-CR-119

CRYSTAL MUÑOZ, *
Defendant. *

**GOVERNMENT'S MOTION IN LIMINE
(Incorporating Brief with Supporting Authorities)**

TO THE HONORABLE JUDGE OF THIS COURT:

The United States of America, by and through its undersigned counsel, hereby files this pretrial motion in limine and would show the Court as follows:

1. Prior to trial the government requests that the Court instruct the Defendant, her counsel, and any of their witnesses in this cause not to litigate or relitigate, mention, recite, allude to, suggest, comment, or refer in any way to the following in the jury's presence:

(A) The punishment faced by the defendant if convicted as such is not to be assessed by the jury and is specifically prohibited from their consideration or discussion during deliberations by Instruction 1.20 (Caution - Punishment) of the *Fifth Circuit Pattern Jury Instructions*, 2001 Edition.

(B) Defendant's current pregnant status, the fact that she has a small child, and/or the fact that she has suffered the misfortune of losing a child in the past as these facts bear no relevance on whether or not Munoz committed the offense alleged. Such evidence could only be offered to evoke sympathy for the defendant, which is specifically prohibited from the

jury's consideration or discussion during deliberations in Instruction 1.04 (*Duty to Follow Instructions*) of the *Fifth Circuit Pattern Jury Instructions*, 2001 Edition.

(C) Any sidebar statements of fact by defense counsel regarding the ranch road(s) that circumvent the U.S. Border Patrol's Marathon checkpoint or a hand-drawn map of those roads that is expected to be an exhibit in this case. The map and the roads are expected to be central topics in the trial. Defense counsel diligently traveled to Big Bend and the area south of Marathon to inspect it for himself, and attempted to drive the circumventing path before being detained and escorted back to the checkpoint by a responding Border Patrol agent. It is requested that defense counsel not predicate his questions and/or make comments such as, "Well I got lost trying to use that map," "Border Patrol agents stopped me as soon as I got on that road," etc. Such statements by lawyers for either side are not evidence, and the Court has always instructed the jury in this manner before and after the evidence portion of the trial with Instructions 1.01 (*Preliminary Instruction*) and 1.06 (*Evidence - Excluding What is Not Evidence*) of the *Fifth Circuit Pattern Jury Instructions*, 2001 Edition.

2. The foregoing requests are intended to insure that the fact finder is not burdened with information that is irrelevant, Fed.R.Evid. 401-402, and/or unfairly prejudicial, confusing, misleading to the jury, and/or wasteful of time, Fed.R.Evid. 403. The requests should be granted to secure fairness in the conduct of the trial, to eliminate unjustifiable delay, and to promote the objective that "the truth may be ascertained and proceedings justly determined" in this case. Fed.R.Evid. 102.

WHEREFORE, the government urges the Court to grant this motion prior to trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

By signing above, I hereby certify that on October 29, 2007, I filed this document with the Clerk using the CM/ECF filing system, which will cause a copy of the document to be delivered to counsel for Defendant, Mr. Dan Wade.

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ORDER REGARDING GOVERNMENT'S MOTION IN LIMINE

On this day came on to be considered the government's motion for the above-captioned relief. After due consideration, the Court finds that the motion should be granted _____ in its entirety.

_____ as to paragraph(s) 1(A) _____, 1(B) _____, and/or 1(C) _____ only.

SO ORDERED on this _____ day of _____ 2007.

ROBERT JUNELL
United States District Judge